IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

CRL.A.No. 645 of 2003()

SC.341/2000 DATED 05/04/2003 of ADDL.SESSIONS JUDGE (AD HOC-II) KASARGOD

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APPELLANT: ACCUSED

KARICHI, W/O.KUNHAMBU, EDAKKADAVU,
KALLAR VILLAGE.

BY ADV. SRI.M.THAMBAN
SMT.T.SUDHAMANI

RESPONDENTS: COMPLAINANT & STATE

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1. THE STATION HOUSE OFFICER, RAJAPURAM POLICE STATION.

2. THE STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A. No. 645 of 2003

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Dated this the 26th day of February, 2007

J U D G M E N T

The accused, a woman, aged then about 38 years, in Sessions Case No.341/2000, on the file of Additional Sessions Court (Ad hoc -II), Kasaragod, is the appellant. She was found guilty of the offence punishable under Section 55(a) of the Abkari Act, in short 'the Act', and, therefore, she was convicted and sentenced thereunder to undergo rigorous imprisonment for six months and also to pay a fine of rupees one lakh, in default to undergo rigorous imprisonment for a further period of two months. The same is under challenge through this appeal.

2. The brief facts required for the disposal of this appeal are that PW.4, accompanied by PW.1 and others, were on duty on 28/11/1999, at about 4 p.m. At that time, the appellant was found in illegal possession of two litres of illicit arrack at Edakkadavu. The contraband was seized and Exhibit P1 seizure mahazar was prepared. Exhibit P1 was attested by PW.2. The appellant could not be arrested as there was no woman police

constable in the party of PW.4. However, she surrendered on the next day before the police station concerned. PW.1, the police constable, accompanied PW.4, the detecting officer. PW.4 also partly investigated the case. Both supported the seizure. PW.3 is a witness to Exhibit P2 scene mahazar. PW.5 is the investigating officer, who laid the final report against the appellant under Section 55(a) of the Act.

3. The prosecution examined five witnesses and marked eight documents. Exhibit P8 is the chemical analysis report, which shows that the contraband seized is of illicit arrack. MO.1 is the can in which the arrack was carried.

4. When the appeal came up for consideration, the learned counsel for the appellant submitted that Exhibit P1 seizure mahazar is not legally proved, as PW.2 is a stock witness of the police and he has not signed Exhibit P1, as the signature therein, varies with that of his signature in the deposition sheets, as PW.2. The counsel also submitted that there are lot of discrepancies as; the appellant escaping from the custody, as recorded in Exhibit P6, under caption 'particulars of person in

custody' against serial No.4 of the forwarding note and also the materials availed from the evidence of PWs.2 and 3.

5. It is true that there are slight variations in the signatures found in the depositions of PW.2 as well as the one found in Exhibit P1 seizure mahazar. Except the contention that PW.2 is the regular witness of the police, there is no material produced during the trial, to show that he had appeared in any other case and deposed against any accused, in favour of the prosecution, and, also to show that he was speaking falsehood in this case. Merely because PW.2 knew PW.4, the Sub Inspector, it cannot be concluded that he is a regular witness, supporting all the police cases. In the absence of other corroborating material I reject the above contention. Exhibit P6 contains the left hand thumb impression of the appellant. Nothing is asked to PW.1 or PW.4 regarding the presence of the the appellant at the time of preparation of Exhibit P1. Merely because, in the forwarding note a clerical error occurred, which lead to the writing in the forwarding note as 'escaped', would not enable the appellant to contend that a false case had been foisted against the appellant.

6. The counsel further submitted, relying on Exhibit P8 chemical analysis report that, the percentage of ethyl alcohol is varying and, therefore, the samples may not have been taken from the arrack seized from MO.1 can.

7. In item No.1 sample, the percentage of ethyl alcohol is certified as 17.82 and in item No.2 sample, the percentage of ethyl alcohol is certified as 17.65. This variation is very minor and even may be human error. Therefore, I cannot accept the contention of the counsel for the appellant that the samples sent for chemical analysis are different and not from the illicit arrack seized from the possession of the appellant.

8. On appreciation of the entire materials that are placed before me, I am of the view that the prosecution has proved the case beyond reasonable doubt and the other contentions taken by the appellant are without any corroboration. Therefore, I hold that the prosecution has established a case under Section 55(a) of the Act. The conviction is accordingly upheld.

9. At this stage the learned counsel for the appellant submitted that the appellant is a woman, leading a

family life and she is also a handicapped person. The appellant had stated before the court below that she is not fully capable of doing the work. Her one hand is weak and she is also sick. Considering all the aspects, I am of the view that the sentence could be modified from rigorous imprisonment for six months to rigorous imprisonment for three months.

10. In the result, the appeal is partly allowed. The conviction is upheld. The sentence of rigorous imprisonment for six months is modified and reduced to rigorous imprisonment for three months. The fine of rupees one lakh and default sentence therein, imposed by court below is upheld.

11. The Additional Sessions Court (Ad hoc-II), Kasaragod, is directed to issue a fresh warrant against the appellant in accordance with this modified sentence.

The appellant is entitled to set off, as per the law.

(J.M.JAMES)
Judge

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J.M.JAMES, J.

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Crl.A. No. 645 of 2003

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J U D G M E N T

26th February, 2007